

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

CHARLES JASON LIVELY,

Petitioner,

v.

CIVIL ACTION NO. 2:15-cv-07458

DAVID BALLARD,

Respondent.

**MEMORANDUM OPINION AND ORDER**

Pending before the Court is Respondent's Motion to Dismiss for Failure to Exhaust (the "Motion to Dismiss"). (ECF No. 23.) By Standing Order filed in this case on June 9, 2015, this action was referred to United States Magistrate Judge R. Clarke VanDervort for total pretrial management and submission of proposed findings of fact and recommendations for disposition. (ECF No. 2.) On January 13, 2016, the Court entered an order transferring the referral of this case to United States Magistrate Judge Omar J. Aboulhosn. (ECF No. 31.) On June 3, 2016, Magistrate Judge Aboulhosn filed proposed findings of fact and recommendations for disposition (the "PF&R"), in which he recommends that the Court deny the Motion to Dismiss. (ECF No. 32.)

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Plaintiff's right to appeal this

Court's order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).


Objections to the PF&R in this case were due by June 20, 2016. (*See* ECF No. 32 at 26–27.) To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the recommendation contained in the PF&R that the Court deny the Motion to Dismiss, (ECF No. 32 at 26), and **DENIES** the Motion to Dismiss, (ECF No. 23).<sup>1</sup>

**IT IS SO ORDERED.**

The Court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to counsel of record and any unrepresented party.

ENTER: September 1, 2016

A handwritten signature in blue ink, appearing to read 'Th. Johnston', is written over a horizontal line.

THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The Court notes that Magistrate Judge Aboulhosn does not terminate the referral of this action in the PF&R, (ECF No. 32), and this Court has not otherwise withdrawn the referral of this case. As such, pursuant to this Court's January 13, 2016 order, this matter remains referred to Magistrate Judge Aboulhosn for total pretrial management and submission of proposed findings of fact and recommendations for disposition. (*See* ECF No. 31.)